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The Honorable Whitman L. Holt

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8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE EASTERN DISTRICT OF WASHINGTON
10

11 In re:

12 **HUSCH & HUSCH, INC.,**

13
14 Debtor.

No. 20-0465-WLH11

**MOTION TO COMPEL TRANSFER
OF NON-DEBTOR PROPERTIES**

15
16 McCallen & Sons, Inc. (“MSI” or “Liquidating Agent”), in its capacity as the court
17 appointed liquidating agent of Husch & Husch, Inc. (“Debtor”) hereby moves this Court to
18 compel transfer to the Debtor of certain non-Debtor properties. The Chapter 11 Plan confirmed
19 by this Court called for liquidation of three properties owned by entities and individuals closely
20 related to Debtor. However, certain subsequent rulings of this Court have called into question
21 the Liquidating Agent’s standing and authority to transfer title to and otherwise administer
22 those properties. Transfer of these properties to the Debtor is required to effectuate the purpose
23 and intent of the Plan. While the non-debtor individuals and entities have seemingly agreed to
24 comply with the Liquidating Agent’s request, they have failed to perform thus far. This Court
25 has authority pursuant to 11 U.S.C. § 1142(b) and related case law to compel the transfers, and
26 should do so to prevent further delay.

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STATEMENT OF FACTS

1. This chapter 11 voluntary proceeding was filed on March 4, 2020. ECF No. 1.

2. No official committee of unsecured creditors has been appointed in this proceeding. ECF. No. 70.

3. On August 25, 2021, the court confirmed the Debtor's Fourth Amended Plan ("Plan"). ECF No. 422.

4. Pursuant to the Plan, on October 12, 2021, the court entered an order (the "Appointment Order") appointing MSI as the liquidating agent under the Plan with full authority to sell substantially all of the assets of the Debtor, together with certain assets of non-Debtors Husch Properties, LLC, L. Kelly Husch, and Deanna Husch (the "Non-Debtor Properties"). ECF No. 437.

5. The Appointment Order provided that "McCallen is hereby appointed as Liquidating Agent with power of sale over all assets and real property of Husch & Husch and Husch Properties and certain limited property of other Related Parties, including but not limited to the Property described above and in Exhibit A hereto . . . (the "Estate")." *Id.* at ¶ 1. Exhibit A to the Appointment Order specifically included the three parcels that are the subject of this Motion. Kelly Husch and Husch Properties, LLC both approved the order through counsel.

6. The first Non-Debtor Property at issue is owned equally by Deanna and L. Kelly Husch, and is located at 3990 Harrah Road, Wapato, WA, Parcel No. 18112744019 (the "Restaurant Lot"). An operating Mexican restaurant is located on the lot. The Husches granted Heritage Bank a Deed of Trust on the Restaurant Lot to secure the debts of the Debtor. *Heritage Bank v. Husch Properties, LLC, et al*, Adversary Case No. 20-80008-WLH, ECF No. 1. The Plan defines the Restaurant Lot at Section 1(39), and provides for liquidation of this property for the benefit of Debtor's creditors at Section X.

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1 7. The next Non-Debtor Property is owned by Husch Properties, LLC¹ and is
2 located at 8031 Branch Road, Harrah, WA, Parcel No. 18112744037 (the “Office Lot”). An
3 office building is located on this property, which is leased to Debtor for use as its corporate
4 offices. Husch Properties granted Heritage Bank a Deed of Trust on the Office Lot to secure the
5 debts of the Debtor. Adversary Case No. 20-80008-WLH, ECF No. 1. The Plan defines the
6 Office Lot at Section 1(29)(a), and provides for liquidation of this property for the benefit of
7 Debtor’s creditors at Section X.

8 8. The final Non-Debtor Property is owned by L. Kelly Husch and is located at
9 2730 Jones Road, Wapato, WA, Parcel No. 19110721002 (the “Jones Road Lot”). L. Kelly
10 Husch granted Heritage Bank a Deed of Trust on the Jones Road Lot to secure the debts of the
11 Debtor. Adversary Case No. 20-80008-WLH, ECF No. 1. The Plan defines the Jones Road Lot
12 at Section 1(26), and provides for liquidation of this property for the benefit of Debtor’s
13 creditors at Section X. While the Plan originally provided for sale of the Jones Road Lot only
14 upon the happening of certain contingencies, the amendment to the Plan provided that if the
15 claims of Heritage Bank were not paid within ten days of the Plan’s effective date, the
16 Liquidating Agent was to sell all property immediately. ECF Nos. 400-1 at ¶ 11; 407.

17 9. When seeking removal of Heritage Bank’s state-court receivership action to this
18 Court, with regard to the Non-Debtor Properties, L. Kelly Husch, Deanna Husch, and Husch
19 Properties, LLC, stated as follows:

20 Not only are the properties owned by Husch & Husch, Inc. identified in the Petition
21 utilized by the Debtor, but in addition D. Husch’s parcel number 181127-44019 is used
22 in part by the Debtor for storage of valuable equipment. (Allen Decl., ¶2). Also, as a
23 principle in Husch & Husch, Inc. and alleged guarantor of Husch & Husch, Inc.’s debt,
24 D. Husch deposits rents from said parcel into accounts for the benefit of Husch &
25 Husch, Inc. (Allen Decl., ¶2). Furthermore, business offices of Husch & Husch, Inc. are
26 located on Husch Properties parcel number 181127-44037. (Allen Decl., ¶2). These two
parcels are adjacent to, and used as part of the same complex of properties owned by

¹ In late 2007, Husch Properties, LLC was administratively dissolved by the Office of the Secretary of State for the State of Washington, for failure to timely file its required reports.

1 Husch & Husch, Inc. Along with this, parcel 191107-21002 owned by K. Husch and
2 recited in the receivership has been used at times to store valuable property of Husch &
3 Husch, Inc. when necessary.

4 Adversary Case No. 20-80008-WLH, ECF No. 1. Clearly, these Non-Debtor Properties were
5 utilized by Debtor, were an important part of Debtor's business, and were pledged as security
6 for Debtor's debts. As there is significant value in these Non-Debtor Properties, their
7 liquidation was an essential part of the approved Plan.

8 10. MSI engaged in efforts to sell the Jones Road Lot and entered into a Residential
9 Purchase and Sale Agreement regarding the same. ECF No. 517. On May 12, 2022, the
10 Liquidating Agent filed its Motion to Approve Sale of Property Free and Clear of Liens ("First
11 Sale Motion"). *Id.*

12 11. At that time, MSI was aware of a claimed Leasehold interest (the "Lease") on
13 the Jones Road Lot between Tegan K. Husch as Lessor and TLC Orchards, LLC ("TLC") as
14 Lessee. It is MSI's opinion that the Lease is invalid and not binding on the Jones Road Lot, as
15 it was not executed by the Property owner and does not contain the requisite formalities
16 necessary for a real property Lease—notably the Lease is not notarized. RCW 59.04.010; ECF
17 No. 517. MSI's Sale Motion requested a finding by the Court that the Lease was not binding
18 upon the Estate or the Property. *Id.*

19 12. On or about June 8, 2022, MSI filed an adversary proceeding against TLC,
20 seeking a declaratory judgment that the Lease is invalid and not binding on the Estate or
21 Property. *See McCallen & Sons, Inc. v. TLC Orchards*, Adversary Case No. 22-80012-WLH,
22 ECF No. 1. TLC filed a Motion to Dismiss, claiming that the Court lacked subject matter
23 jurisdiction over the Property and therefore this adversary proceeding, and that the Liquidating
24 Agent lacked standing. *Id.*, ECF No. 5.

25 13. On September 6, 2022, the Court granted Defendant TLC's Motion to Dismiss
26 that adversary proceeding, ruling that the Liquidating Agent lacked standing to prosecute the

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1 suit. No. 22-80012-WLH, ECF No. 18. The Court's ruling raised significant issues regarding
2 the authority of the Liquidating Agent to manage and liquidate the Non-Debtor Properties that
3 were included in the Plan. Judge Holt further indicated that because these Non-Debtor
4 Properties are not owned by the Debtor, they are not property of the "estate" as defined by the
5 Plan, which calls into question whether they can be sold free and clear of liens pursuant to
6 Section 363 and have the proceeds distributed pursuant to the Plan. ECF No. 16.

7 14. On September 14, 2022, the Liquidating Agent, through counsel, sent
8 correspondence to counsel for Kelly and Deanna Husch, demanding that the owners quitclaim
9 the Non-Debtor Properties to the Debtor, so that they could be liquidated as provided for by the
10 Plan. Declaration of Daniel Bugbee in Support of Motion to Compel Transfers of Non-Debtor
11 Properties ("Bugbee Dec."), Ex. A.

12 15. Deanna Husch agreed to make the requested transfer, and did execute a
13 quitclaim deed for the Restaurant Lot. *Id.* at ¶ 4.

14 16. On or about October 11, 2022, counsel for Kelly Husch indicated that he would
15 agree to execute the deeds and deliver them to the Liquidating Agent, to be held for recording
16 until after court approval of an eventual sale. *Id.*, Ex. B. The Liquidating Agent agreed.
17 However, to date, Kelly Husch has still not executed and delivered the deeds on behalf of
18 himself or Husch Properties. *Id.* at ¶ 5-7; Ex. C.

19 17. Due to the continued delay in Mr. Husch executing the deeds, the Liquidating
20 Agent now seeks a Court Order compelling L. Kelly Husch and Husch Properties, LLC to
21 quitclaim these properties to the Debtor, so they may be liquidated for the benefit of creditors,
22 as contemplated by the Plan.

23 LEGAL ARGUMENT

24 1. The Liquidating Agent has Standing to Seek a Court Order Necessary to 25 Effectuate the Plan. 26

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1 18. The Appointment Order appointed McCallen & Sons as Liquidating Agent
2 “with power of sale over all assets and real property of Husch & Husch and Husch Properties
3 and certain limited property of other Related Parties, including but not limited to the Property
4 described above and in Exhibit A hereto . . .” ECF No. 437 at ¶ 1. (emphasis added). The
5 “Estate” for liquidation, as defined by the Appointment Order, specifically included the
6 Restaurant Lot, the Office Lot, and the Jones Road Lot. *Id.* at ¶ 1. Upon appointment, the
7 Liquidating Agent was deemed to have “exclusive possession and control over the Estate.” *Id.*
8 at ¶ 3. The Appointment Order gave the Liquidating Agent all the powers of a Chapter 7
9 Trustee: “The Liquidating Agent shall have all other powers and rights of a Liquidating Agent
10 appointed under the Bankruptcy Code, including, without limitation, all of those duties,
11 powers, and rights of a trustee as set forth in 11 U.S.C. § 704 and the Plan (as may be amended
12 by the court).” *Id.* The Appointment Order further provides “the Liquidating Agent may at any
13 time apply to this court for further instructions or for modification of this Order of for further
14 powers necessary to enable the Liquidating Agent to properly perform its duties . . .” *Id.* at ¶
15 4(e). The Liquidating Agent has standing and authority to request the Court compel transfer of
16 the Non-Debtor Properties to the Debtor, to facilitate their liquidation in accordance with the
17 terms of the Plan.

18 **2. This Court has Authority to Compel Transfer of the Non-Debtor Properties to the**
19 **Debtor.**

20 19. The Bankruptcy Code provides a means by which the court may compel non-
21 debtor parties to execute documents necessary to effectuate a confirmed Plan. “[T]he court may
22 direct the debtor and any other necessary party to execute or deliver or to join in the execution
23 or delivery of any instrument required to effect a transfer of property dealt with by a confirmed
24 plan and to perform any other act, including the satisfaction of any lien that is necessary for the
25 consummation of the plan.” *See* 11 U.S.C. § 1142(b). “Subsection (b) implicitly contemplates a
26 creditor, shareholder, or other party affected by the plan moving for an order which triggers the

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1 court's authority to direct a recalcitrant debtor or other party to perform acts necessary to
2 consummate the plan." *In re Harlow Properties, Inc.*, 56 B.R. 794, 798 (B.A.P. 9th Cir. 1985)

3 20. For instance, in *Official Unsecured Creditors' Committee v. Siskind*, the
4 bankruptcy court relied on Section 1142(b) when it ordered certain related parties to contribute
5 funds that they had pledged to the Plan. 137 B.R. 165, 170 (Bankr. W.D. Pa. 1992)
6 ("Bankruptcy Code contains the requisite basis for the Court to interpret the Confirmed Plan
7 and to compel the Defendants to fund the Confirmed Plan provided that it so requires and that
8 the Confirmed Plan properly sets forth the agreement of the parties"). Even more similar is *in*
9 *re Harlow Properties, Inc.*, a case originating in this district, in which the Plan provided for
10 sale of a parcel of land owned by Debtor's principals and leased to the Debtor, if plan payments
11 were not timely made. 56 B.R. at 796. When the debtor defaulted on plan payments, the court
12 held it had jurisdiction over a creditor's motion to compel sale of the non-debtor property under
13 Section 1142(b). *Id.* at 798.

14 21. Further, the Appointment Order imposed a duty upon L. Kelly Husch and Husch
15 Properties, LLC to cooperate with the Liquidating Agent in effectuating the Plan and its
16 contemplated liquidation. Appointment Order, ¶ 4(f) ("the debtor and related parties shall
17 provide all cooperation and assistance as they would be required to provide if the liquidating
18 agent had been appointed as a trustee under the bankruptcy code"). The Liquidating Agent sent
19 a demand letter requesting that the owners of the Non-Debtor Properties quit claim them to the
20 Debtor, in order to allow them to be sold by the Liquidating Agent as provided for by the Plan.
21 While Mr. Husch has indicated he will sign on behalf of himself and Husch Properties, his
22 continued delay in doing so raises questions regarding the veracity of this promise. Even after
23 Plan confirmation, a bankruptcy court retains jurisdiction to enforce its own orders. *Huse v.*
24 *Huse-Sporsem, A.S. (In re Birting Fisheries, Inc.)*, 300 B.R. 489, 499 (9th Cir. BAP
25 2003) (bankruptcy court's core jurisdiction includes confirmation of plans, and core
26

jurisdiction continues for the court to enforce its orders). The Appointment Order provides a further basis for compelling the transfers as requested by this Motion.

3. This Court should Grant an Order Compelling the Transfers of the Non-Debtor Properties, as Transfer is Appropriate and Necessary to Effectuate the Plan.

22. The Court should compel the Non-Debtor Parties to quitclaim the Non-Debtor Properties to the Debtor, in order to effectuate the intent of the Plan. If the transfers are not made, the Liquidating Agent's ability and authority to liquidate these properties is hamstrung. The Court has already ruled that the Liquidating Agent lacked standing to determine the impact of the TLC Lease on the Jones Road Lot, and also opined that the Liquidating Agent may not be able to sell these Non-Debtor Properties free and clear of liens, as they are not property of the "Estate" as defined in the Plan. In so ruling, the court threw into question whether or not the Liquidating Agent would even be able to transfer title to the Non-Debtor Properties to a purchaser. The Liquidating Agent cannot proceed with its efforts to liquidate these properties for the benefit of estate creditors until these issues are resolved.

23. Transfer of the Non-Debtor Properties to the Debtor via quitclaim deed is the fastest and cleanest method by which to ensure that these Non-Debtor Properties are considered property of the "Estate" as defined in Section 1(19) of the Plan and within the meaning of 11 U.S.C. § 541. 11 U.S.C. § 541(a)(7) states that estate property includes "[a]ny interest in property that the estate acquires after the commencement of the case," and thus these Non-Estate Properties will be within the scope of the Estate and the Liquidating Agent's granted authority upon transfer.

24. These Non-Debtor Properties were explicitly included in the assets to be liquidated for the benefit of the estate's creditors, and thus the inability to effectively liquidate these properties would throw into question the continued feasibility of the Plan as well as thwart the reasonable expectations of those creditors and stakeholders who voted in favor of the Plan. Owners Deanna Husch, L. Kelly Husch, and Husch Properties, LLC were all involved in

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1 revision and negotiating the terms of the Plan and all agreed to the Appointment Order, as
2 indicated by the signatures of their counsel, which provided for liquidation of the Non-Debtor
3 Properties. These related parties are bound by the terms of the Plan, and through their own
4 adversary proceeding, they indicated their belief that these lots should be treated as part of
5 Debtor's bankruptcy. There is no surprise or unfairness in requiring these parties to quitclaim
6 the Non-Debtor Properties to the Debtor at this juncture.

7 25. These Non-Debtor Properties represent a significant portion of the value of the
8 estate. The proposed transfers are a preferable solution to seeking to modify the Plan. The
9 requested quitclaim transfers are also preferable to having the Liquidating Agent market the
10 Non-Debtor Properties and compelling the owners to deed the properties to the ultimate
11 purchaser as part of a sale motion, because issues remain with these Properties (such as the
12 TLC Lease and dealing with other tenants), which could depress the sales price of these assets
13 if they cannot be resolved by the Liquidating Agent prior to sale. Additionally, several of the
14 Non-Debtor Properties (the Restaurant Lot and the Office Lot) are best marketed and sold in
15 conjunction with other Debtor properties—and the complexities inherent in marketing and
16 closing a sale of properties owned by three different parties to one buyer (especially when
17 transfer might have to be compelled by the court) could cause interested buyers to balk.
18 Transfer of the Non-Debtor Properties to the Debtor at this juncture is appropriate and
19 necessary to effectuate the agreed terms of the Plan.

20 CONCLUSION

21 As in the *Siskind* case, without compelling the transfer of these Non-Debtor Properties
22 to the Debtor, "it is impossible to administer the estate, implement the Confirmed Plan, and
23 close this case . . ." *Siskind*, 137 B.R. at 170. MSI respectfully requests that the Court grant this
24 Motion and compel L. Kelly Husch and Husch Properties, LLC to timely execute and deliver to
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1 the Liquidating Agent quitclaim deeds and Real Estate Excise Tax Affidavits, to facilitate
2 transfer of the Non-Debtor Properties to the Debtor.

3 DATED this 2nd day of November, 2022.

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6 By /s/ Daniel J. Bugbee

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CERTIFICATE OF SERVICE

I, Daniel J. Bugbee hereby certify on November 2, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which, pursuant to Local Rule 5005-1(c)(1), causes parties who are registered ECF participants to be served by electronic means.

Dated this 2nd day of November, 2022 at Seattle, Washington.

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